Ketua Pengarah Pertubuhan Keselamatan Sosial, Kuala Lumpur v Philip bin Felix @ Philip bin Sintik

HIGH COURT (SANDAKAN) — SUIT NO S16–05 OF 2002
LINTON ALBERT JC
28 NOVEMBER 2003

Labour Law — Workmen's Compensation — Whether accident arose out of and in the course of employment — Whether injury due to accident arising out of and in the course of employment — Employees' Social Security Act 1969 s 2(6), 23

The respondent was employed as a driver by Koperasi Pembangunan Desa ('KPD'), an industry registered with the Social Security Organisation ('SOCSO'). KPD organized its Annual Sports Carnival at Kota Kinabalu from 29 November to 2 December 1996. The respondent was selected to play football and his participation was made compulsory by KPD. The respondent sustained a fracture of his leg in the course of the football match as a result of an accident. The accident occurred on a Saturday. The single issue that arose in the appeal was whether the injury sustained by the respondent was an employment injury within the meaning of s 2(6) of the Employees' Social Security Act 1969 ('the Act'). The appellant contended that the Board had erred in law in concluding that the accident arose in the course of the respondent's employment as a driver. The Board found in favor of the respondent. Hence, this appeal.

Held, upholding the decision of the Board and dismissing the appeal with costs:

The purpose of the Act is to provide social security. Accordingly, it follows that s 2(6) of the Act should not be given a restrictive and literal interpretation. The respondent's participation in the football match, made compulsory by his employer, is a duty imposed on the respondent as a member of his employer's staff. It is inconceivable that an employee who encounters an accident by reason of compulsory participation in any such activity, at the behest of the employer, can be said to do so at his own peril and denied the protection of the Act (see para 6).

[**Bahasa Malaysia summary**

Responden telah digaji sebagai seorang pemandu oleh Koperasi Pembangunan Desa ('KPD'), iaitu satu industri yang didaftarkan dengan Organisasi Keselamatan Sosial ('SOCSO'). KPD telah menganjurkan Karnival Sukan Tahunannya di Kota Kinabalu pada 29 November hingga 1 Disember 1996. Responden telah dipilih untuk bermain bolasepak dan penyertaan beliau telah diwajibkan oleh KPD. Responden telah mengalami patah tulang kaki di dalam perlawanan bolasepak tersebut akibat daripada satu kemalangan. Kemalangan tersebut telah berlaku pada hari Sabtu. Isu tunggal yang bangkit di dalam rayuan adalah sama ada kecederaan yang dialami oleh responden merupakan satu kecederaan penggajian di dalam makna s 2(6) Akta Keselamatan Sosial Pekerja 1969 ('Akta tersebut'). Pihak perayu telah

mengatakan bahawa Lembaga telah tersilap dari segi undang-undang apabila memutuskan bahawa kemalangan tersebut telah berlaku di dalam penggajian responden sebagai seorang pemandu. Lembaga telah memutuskan berpihak kepada responden. Pihak perayu telah merayu.

Diputuskan, mempertahankan keputusan Lembaga dan menolak rayuan dengan kos:

Tujuan Akta tersebut adalah untuk memperuntukkan keselamatan sosial. Justeru itu, s 2(6) Akta tersebut tidak harus diberikan satu tafsiran yang menghadkan dan mengikut perkataan demi perkataan. Penyertaan responden dalam perlawanan bolasepak tersebut, yang diwajibkan oleh majikan beliau, adalah suatu kewajipan yang dikenakan ke atas responden sebagai seorang ahli pekerja responden. Adalah suatu yang tidak boleh dibayangkan bahawa seorang pekerja yang mengalami kemalangan akibat daripada penyertaan yang diwajibkan dalam sebarang aktiviti yang sama, di atas suruhan majikannya, boleh dikatakan berbuat demikian di atas risiko sendiri dan dihalang daripada menerima perlindungan di bawah Akta tersebut (lihat perenggan 6).]

Notes

For cases on whether accident arose out of and in the course of employment, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1605–1610.

Legislation referred to

Employees' Social Security Act 1969 ss 2(6), 23

Marianne Antoinette Ghani (James Ghani & Co) for the appellant.
Respondent representing himself.

Linton Albert JC:

[1] This is an appeal against the decision of the Social Security Appellate Board. The appellant was dissatisfied with the decision of the Social Security Appellate Board ('the Board') which had ruled in favour of the respondent, who as a result of his injury had lodged a claim with the Social Security Organization ('SOCSO'). The respondent's claim was rejected by Socso which led to the respondent's appeal to the Board. The only issue in this appeal is whether the injury sustained by the respondent is an employment injury within the meaning of s 2(6) of the Employees' Social Security Act 1969 ('the Act') there being no controversy that the respondent was an insured person under the Act.

[2] The respondent was an employee of Koperasi Pembangunan Desa (KPD) an 'industry' registered with SOCSO. He was engaged as a driver at KPD's Telupid office with normal working hours from 8am to 4.15pm. Sometimes he worked overtime until 6pm. As is the norm nowadays for both public and private organizations, KPD being no different, organized its Annual

Sports Carnival at Kota Kinabalu from 29 November to 2 December 1996. Not surprisingly, football featured as an event in this Annual Sports Carnival. Unfortunately, as it turned out, the respondent was selected to play football and his participation was made compulsory by KPD. In the course of the football match on 30 November 1996, the respondent sustained a fracture of his right leg as a result of an accident. SOCSO by its letter dated 1 April 1997 rejected the respondent's claim on the basis that the football match which the respondent participated in was a recreational activity not related to his duty as a driver and as such not an 'employment injury' under the Act. The Board, however, decided otherwise. Hence, this appeal.

[3] Learned counsel for the appellant, Marianne Antoinette Ghani in her written submission contended that the Board had erred in law in coming to the conclusion that the accident at the football match which led to the respondent's injury arose in the course of the respondent's employment as a driver. It was also emphasized on behalf of the appellant that the Board had proceeded on the erroneous assumption that the accident which happened at 3pm on 30 November 1996 occurred during normal working hours when in fact it was not because it fell on a Saturday. Not unnaturally, learned counsel for the appellant made a meal of this discordant note in an otherwise irreproachable decision of the Board. I shall refer to this in greater detail later to consider whether this misapprehension of the normal working hours of the respondent is of any consequence to the appeal before me but first Ishall set out and reproduce the relevant sections of the Act upon which the outcome of this appeal depend. The relevant sections of the Act are ss 2(6) and 23:

[4] Section 2(6) states:

> 'employment injury' means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment in an industry to which this Act applies.

[5] Section 23 is as follows:

> For the purpose of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

[6] Simply put, the appellant's contention is that the respondent's participation in the football match was not something he was engaged to do in discharge of his duty as a driver and the accident could not, therefore, be said to have arisen out of and in the course of his employment as a driver. With respect, I do not think a restrictive and literal interpretation of s 2(6) is consistent with the purpose of the Act which is to provide Social Security. It was an undisputed fact that the Annual Sports Carnival held from 29November to 2 December 1996 was a yearly event organized by the respondent's employer to foster closer ties between its staff throughout Sabah. Surely, the respondent's participation in the football match, made compulsory by his employer is a duty imposed on the respondent not necessarily as a driver but as a member of his employer's staff. It is unrealistic for the court to be oblivious to the fact that employers are now increasingly

aware of their social responsibilities not only to their own staff but also to society at large and are occasionally involved in organizing all manner of 'gotong royong' projects or sports carnival as in this case. Hence, it is inconceivable that a driver or for that matter, a grass-cutter who encounters an accident by reason of compulsory participation in any of these activities at the behest of his or her employer, can be said to do so at his or her own peril, and denied the protection of the Act.

[7] For the reasons aforesaid, I do not think that it matters whether the accident happened during or outside normal working hours. There is no doubt in my mind that the Board could not have come to a different conclusion even if it had been aware that the accident which caused the injury to the respondent occurred outside normal working hours. I do not propose to repeat the contents of the decision of the Chairman of the Board save that I find the Chairman had considered and made appropriate analogies to similar cases based on the undisputed facts before the Board and had considered and applied the correct principles.

[8] For the reasons and in the circumstances aforesaid, I upheld the decision of the Board and accordingly dismissed the appeal with costs.

Decision of the Board upheld and appeal dismissed with costs.

Reported by Eugene Jayaraj